Supreme Court, U.S.
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No. ____ OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID RUSSELL STAHL,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the Florida Second District Court of Appeal

PETITION FOR WRIT OF CERTIORARI

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A. QUESTIONS PRESENTED FOR REVIEW

1. Whether a waiver of collateral review provision in a plea agreement is enforceable to prevent a criminal defendant from thereafter filing a postconviction motion collaterally attacking a conviction and/or sentence.

2. Whether a waiver of collateral review provision in a plea agreement is enforceable if the judge failed to address the criminal defendant – on the record– regarding the waiver provision to ensure that the defendant knowingly, intelligently, and voluntarily waived his or her right to pursue postconviction remedies.

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

C. TABLE OF CONTENTS AND TABLE OF CITED AUTHORITIES

1. TABLE OF CONTENTS

A. QUESTIONS PRESENTED FOR REVIEW i

B. PARTIES INVOLVED ii

C. TABLE OF CONTENTS AND TABLE OF AUTHORITIES iii

1. Table of Contents iii

2. Table of Cited Authorities iv

D. CITATION TO OPINION BELOW 1

E. BASIS FOR JURISDICTION 1

F. CONSTITUTIONAL PROVISION INVOLVED 2

G. STATEMENT OF THE CASE 2

H. REASON FOR GRANTING THE WRIT .. 10

The questions presented are important and have an impact on all criminal prosecutions nationwide 10

I. CONCLUSION 21

2. TABLE OF CITED AUTHORITIES

a. Cases

Boykin v. Alabama, 395 U.S. 238 (1969) 2

Carnley v. Cochran, 369 U.S. 506 (1962) 19

Davila v. United States, 258 F.3d 448 (6th Cir. 2001) 12

DeRoo v. United States, 223 F.3d 919 (8th Cir. 2000) 12

Garcia-Santos v. United States, 273 F.3d 506 (2d Cir. 2001) 12

Mason v. United States, 211 F.3d 1065 (7th Cir. 2000) 12

Stahl v. State, 972 So. 2d 1013 (Fla. 2d DCA 2008) 1, 8-9

Swift v. Choe, 674 N.Y.S.2d 17 (N.Y. App. Div. 1998) 11

United States v. Abarca, 985 F.2d 1012 (9th Cir. 1993) 12

United States v. Arellano-Gallegos, 387 F.3d 794 (9th Cir. 2004) 17

United States v. Blackwell, 199 F.3d 623
(2d Cir. 1999) 17

United States v. Bushert, 997 F.2d 1343
(11th Cir. 1993) 17

United States v. Cockerham, 237 F.3d 1179
(10th Cir. 2001) 12-13, 16

United States v. DeSantiago-Martinez,
980 F.2d 582 (9th Cir. 1992) 17

United States v. Kiefer, No. CRIM. A. 96-279,
C.A. 98-536, 1998 WL 388592
(E.D. La. July 9, 1998) 13

United States v. Teeter, 257 F.3d 14
(1st Cir. 2001) 16-17

United States v. Teshima-Jiminez, No. CRIM.
97-087, 1999 WL 600326
(E.D. La. Aug. 5, 1999) 13

United States v. White, 307 F.3d 336
(5th Cir. 2002) 12

Williams v. United States, 396 F.3d 1340
(11th Cir. 2005) 12

b. Statutes

28 U.S.C. § 1257 1

28 U.S.C. § 2254 7

28 U.S.C. § 2255 13

c. Other

Code of Professional Responsibility DR 6-102(A) . 11

Fla. R. Crim. P. 3.850 6-7

Model Rule of Professional Responsibility 1.8(h) . 11

NACDL Ethics Opinion No. 03-02 11

Sup. Ct. R. 14(1)(g)(i) 8

U.S. Const. amend. VI 13

U.S. Const. amend. XIV 2

U.S. Const. art. I, § 9, cl. 2 5

The Petitioner, DAVID RUSSELL STAHL, respectfully prays the Court to issue its writ of certiorari to review the judgment of the Florida Second District Court of Appeal entered in this case on January 4, 2008 (Pet. App. 1a), discretionary review denied by the Florida Supreme Court on June 12, 2008. (Pet. App. 10a).

D. CITATION TO OPINION BELOW

Stahl v. State, 972 So. 2d 1013 (Fla. 2d DCA 2008).

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257 to review the final judgment of the Florida Second District Court of Appeal rendered on January 4 , 2008 (Pet. App. 1a), discretionary review denied by the Florida Supreme Court on June 12, 2008. (Pet. App. 10a).

F. CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the Constitution provides that no "State [shall] deprive any person of life, liberty, or property, without due process of law." Constitutional due process principles require that waivers of rights during plea proceedings must be done with a knowing, intelligent, and voluntary understanding of the rights being waived. *See, e.g., Boykin v. Alabama*, 395 U.S. 238, 242 (1969).

G. STATEMENT OF THE CASE

In case number 01-CF-005859, David Russell Stahl (hereinafter "Petitioner Stahl") was found guilty by a jury of a lewd or lascivious battery, a

second-degree felony.[1] Petitioner Stahl also had pending against him charges of lewd or lascivious conduct in case number 01-CF-001737 and unlawful sexual activity with a minor in case number 01-CF-005860, both second-degree felonies. On September 9, 2004, Petitioner Stahl entered into a negotiated plea agreement with the prosecution. Pursuant to the plea agreement, for case number 01-CF-005859, Petitioner Stahl was sentenced to six years' imprisonment followed by nine years' sex offender probation. Pursuant to the plea agreement, Petitioner Stahl pleaded guilty in case number 01-CF-001737 to the lesser-included offense of felony battery in exchange for a sentence on that charge of one year and one day in prison, to run concurrently

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[1] At trial, Petitioner Stahl was acquitted of two felony counts.

with the sentence in case number 01-CF-005859. Finally, pursuant to the plea agreement, case number 01-CF-005860 was *nolle prossed*. The plea agreement was reduced to writing and signed by Petitioner Stahl. (Pet. App. 48a). Many of the details of the plea agreement were also contained in a September 9, 2004, letter written by the prosecutor; Petitioner Stahl signed the last page of the letter. (Pet. App. 67a). The written plea agreement did not contain a collateral review waiver provision. However, the prosecutor's letter stated (on the first page)[2] that pursuant to the

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[2] The acknowledgment signed by Petitioner Stahl on the last page of the prosecutor's letter contained *no reference* to the collateral review waiver provision:

> I, D. Russell Stahl, understand that a plea has been negotiated between myself, my lawyer, and the Office of the State Attorney for the 13th Judicial Circuit, Hillsborough County, Florida. This plea negotiation includes, among other things, a term of community control/probation with specified special conditions that I must accomplish in order to successfully complete my term of supervision. I have read the attached

plea negotiation, Petitioner Stahl was "waiv[ing] all post-verdict challenges in case number 01-CF-005859, including but not limited to any motion for new trial, direct appeal, habeas corpus, and/or motion for post-conviction relief, and waives any appeal, habeas corpus, and/or motion for post-conviction relief in case number 01-CF-001737."[1]

A plea hearing was held on September 9, 2004. At the beginning of the plea hearing, the prosecutor stated that "[w]e have offered this in which Mr. Stahl

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> special conditions of community control/probation, and I agree to abide by them. I am pleading guilty to the charge because I am, in fact, guilty. I further understand that successful completion of an outpatient sex offender treatment program will require my acknowledgment of responsibility in a group therapy setting for improper sexual conduct.

(Pet. App. 67a).

[1] Although the Constitution does not explicitly provide for the right of direct appeal, it does provide for the inviolate right to petition for a writ of habeas corpus. *See* U.S. Const. art. I, § 9, cl. 2.

has waived all post trial challenges including direct appeal and any motions for – I believe there is a motion for new trial and maybe a motion for directed verdict, and also any post conviction motions including habeas corpus and [Florida Rule of Criminal Procedure] 3.850 and waiving his right to make any challenges in 01-1737." (Pet. App. 14a). However, at no time during the hearing did the judge address Petitioner Stahl regarding the collateral review waiver provision. Although the judge informed Petitioner Stahl that he was waiving his "right to appeal," the judge did not specifically inform Petitioner Stahl, on the record, that he was waiving his right to collaterally attack his convictions or sentences. At the conclusion of the September 9, 2004, hearing, Petitioner Stahl

was sentenced consistent with the plea agreement.[4]

Following the September 9, 2004, plea hearing, Petitioner Stahl timely filed a postconviction motion pursuant to Florida Rule of Criminal Procedure 3.850.[5]

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[4] Petitioner Stahl notes that at the conclusion of the September 9, 2004, hearing, the judge stated:

> THE COURT: Mr. Stahl, you have 30 days within which to appeal the judgment, order and sentence this Court [sic]. If you cannot afford the services of an attorney for purposes of that appeal one will be appointed free of charge. Do you have any questions?
>
> THE DEFENDANT: No, Your Honor. Thank you.

(Pet. App. 46a).

[5] Prior to filing his state postconviction motion, Petitioner Stahl filed a petition for habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court (the petition was initially filed in the Northern District of Florida but it was later transferred to the Middle District of Florida). *See Stahl v. Secretary, Department of Corrections, et al.*, case number 8:06-cv-663-T-26TBM. On April 14, 2006, the district court summarily dismissed Petitioner Stahl's petition without prejudice because he had not previously presented the habeas claims in a state postconviction motion. The district acknowledged the existence of the alleged collateral review waiver provision, but the district court concluded that Petitioner Stahl was nevertheless required to file a state postconviction motion exhausting his "available state court remedies."

(Pet. App. 77a, 108a). In the motion, Petitioner Stahl raised claims of ineffective assistance of counsel, newly discovered evidence, and fundamental error. The state postconviction court summarily denied (i.e., without an evidentiary hearing) Petitioner Stahl's postconviction motion, finding that Petitioner Stahl entered into a negotiated plea agreement in which he waived his right to collaterally attack his convictions and sentences. (Pet. App. 69a). On appeal, the Florida Second District Court of Appeal affirmed the state postconviction court's order. *See Stahl v. State*, 972 So. 2d 1013 (Fla. 2d DCA 2008); (Pet. App. 1a).[6] In the

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[6] After the state postconviction court denied Petitioner Stahl's postconviction motion based on the alleged collateral review waiver provision of the plea agreement, Petitioner Stahl appealed the state postconviction court's ruling. In his appellate brief (Pet. App. 115a), Petitioner Stahl argued that collateral review waiver provisions are unenforceable and that the record in the instant case does not demonstrate that Petitioner Stahl knowingly, intelligently, and voluntarily waived his right to pursue a collateral attack. *See* Sup. Ct. R. 14(1)(g)(i). The state appellate court rejected both of these arguments in its opinion.

opinion, the state appellate court held that the collateral review waiver provision was valid despite the fact that the judge did not review the waiver provision with Petitioner Stahl on the record. *See Stahl*, 972 So. 2d at 1016.[7]

Petitioner Stahl timely sought discretionary review in the Florida Supreme Court, but the Florida Supreme Court denied review on June 12, 2008. (Pet. App. 10a). Petitioner Stahl remains incarcerated.

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[7] In its opinion, the state appellate court highlighted the fact that Petitioner Stahl was licensed to practice law in the State of Florida at the time of the plea hearing in this case. Petitioner Stahl submits that this fact is of no consequence to the questions presented in this case. There was no evidentiary hearing in this case and therefore there is nothing in the record demonstrating that Petitioner Stahl had a sufficient understanding regarding the collateral review waiver provision contained in the prosecutor's letter. Moreover, there is nothing in the record establishing that Petitioner Stahl practiced in the area of criminal law.

H. REASON FOR GRANTING THE WRIT

The questions presented are important and have an impact on all criminal prosecutions nationwide.

Petitioner Stahl submits that collateral review waiver provisions in plea agreements raise serious public policy and ethical considerations. Most notably, the Ethics Advisory Committee of the National Association of Criminal Defense Lawyers has released an opinion finding that it is unethical for a criminal defense lawyer to agree to a collateral review waiver provision in a plea agreement: "the rules of professional ethics prohibit a criminal defense lawyer from signing a plea agreement that limits the client's ability to claim ineffective assistance of counsel because the lawyer has a conflict of interest in agreeing to such a provision because it amounts to

prospective limiting of liability."[8] NACDL Ethics Opinion No. 03-02 (http://www.nacdl.org/public.nsf/2cdd02b415ea3a64852566d6000daa79/ethicsopinions/$FILE/op03-02.pdf).[9]

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[8] In the instant case, Petitioner Stahl allegedly waived his right to seek collateral review of his conviction *after* his trial. A defense attorney, aware of some prejudicial flaw in his or her own representation of a defendant at trial, may convince a defendant to waive all collateral ineffective assistance of counsel claims in order to avoid future scrutiny or exposure. Under such a scenario, it is reasonably likely that the defendant would be unaware of such grounds for postconviction relief at the time of the guilty plea (i.e., at the time that the collateral review waiver was obtained).

[9] Model Rule of Professional Responsibility 1.8(h) provides:

> A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

Code of Professional Responsibility DR 6-102(A) is in accord: "A lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice." Such agreements are virtually unenforceable by the lawyer. *See, e.g., Swift v. Choe*, 674 N.Y.S.2d 17, 20 (N.Y. App. Div. 1998).

Several federal circuit courts have upheld collateral review waiver provisions in plea agreements. *See Williams v. United States*, 396 F.3d 1340, 1342 (11th Cir. 2005); *United States v. White*, 307 F.3d 336, 341-44 (5th Cir. 2002); *Garcia-Santos v. United States*, 273 F.3d 506, 508-09 (2d Cir. 2001); *Davila v. United States*, 258 F.3d 448, 451-52 (6th Cir. 2001); *United States v. Cockerham*, 237 F.3d 1179, 1183-87 (10th Cir. 2001); *Mason v. United States*, 211 F.3d 1065, 1069-70 (7th Cir. 2000); *DeRoo v. United States*, 223 F.3d 919, 923 (8th Cir. 2000). However, in *United States v. Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993), the Ninth Circuit declined to hold that a defendant's collateral review waiver "categorically" foreclosed postconviction claims of ineffective assistance of counsel.[fn] Similarly,

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[fn] At least two federal district courts have determined that defendants may raise any ineffective assistance of counsel claims despite the presence of a collateral review waiver provision in a

in *Cockerhan*, Judge Briscoe questioned whether a collateral review waiver provision in a plea agreement could foreclose a subsequent postconviction claim regarding counsel's effectiveness during the sentencing process: "To conclude otherwise would mean that, by generally waiving his right to appeal or file a collateral attack, a criminal defendant also effectively waives his Sixth Amendment right to effective assistance of counsel during the post-plea proceedings." *Cockerhan*, 237 F.3d at 1192 (Briscoe, J., concurring and

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plea agreement. *See United States v. Teshima-Jiminez*, No. CRIM. 97-087, 1999 WL 600326, at *3 (E.D. La. Aug. 5, 1999) (reviewing merits of defendant's ineffective assistance of counsel claims for counsel's failure to object to presentence report and failure to obtain downward departure despite waiver because ineffective assistance claim "is clearly constitutional in nature"); *United States v. Kiefer*, No. CRIM. A. 96-279, C.A. 98-536, 1998 WL 388592, at *2 (E.D. La. July 9, 1998) (addressing merits of ineffective assistance of counsel claim for counsel's failure to object to presentence report despite waiver of 28 U.S.C. § 2255 rights).

dissenting).[11]

By its nature, a direct appeal in a criminal case concerns only those issues that are a matter of record and are presumably known to the defendant prior to the entry of a guilty plea. Thus, the right to appeal can be knowingly, intelligently, and voluntarily waived without implicating constitutional due process principles. In contrast, postconviction remedies such as habeas corpus petitions often raise grounds that were previously unknown to the defendant at the time of a guilty plea (i.e., facts that were not a matter of

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[11] Some of Petitioner Stahl's postconviction claims related to the accuracy of the sentencing scoresheet. (Pet. App. 110a). Petitioner Stahl alleged that his sentence of six years' imprisonment was based on a 25% downward departure from the minimum sentence set forth on the sentencing scoresheet. Hence, if the scoresheet was inaccurate (i.e., if it erroneously included points, including victim injury points), then Petitioner Stahl is entitled to a reduced sentence. Petitioner Stahl could not have knowingly, intelligently, and voluntarily waived his right to collaterally attack his sentence when he was unaware of the basis for the collateral attack at the time of the alleged collateral review waiver.

record and that were not cognizable on appeal). The danger of imposing and enforcing collateral review waivers is that a defendant is without recourse if the defendant discovers after the entry of a guilty plea that his or her counsel failed to advise the defendant properly on defenses and procedures, failed to render effective assistance of counsel during the sentencing proceeding, or that the conviction/sentence is illegal or otherwise subject to attack. Hence, it is impossible for a defendant to effectuate a knowing, intelligent, and voluntary waiver of the right to seek collateral review because the defendant presumably will not have knowledge of the collateral claims being waived. Enforcement of such waivers will lead to unresolved and unremedied fundamental errors that go to the foundation of criminal cases in violation of the most basic tenets of due process. In light of these public

policy and ethical considerations, Petitioner Stahl submits that it is appropriate for the Court to grant this petition for writ of certiorari and provide guidance regarding the validity of collateral review waiver provisions in plea agreements.

Moreover, all of the courts that have enforced collateral review waiver provisions require that the waiver be knowing, intelligent, and voluntary. *See Cockerham*, 237 F.3d at 1190-91 ("In sum, we hold that . . . a [collateral review] waiver must be knowingly and voluntarily made."). "The baseline for any waiver of rights is that the defendant enter into it knowingly and voluntarily." *United States v. Teeter*, 257 F.3d 14, 24 (1st Cir. 2001). In *Teeter*, the First Circuit held that for an appeal/collateral review waiver to be valid, "the district court must inquire specifically at the change-of-the-plea hearing into any waiver of

appellate[/collateral] rights." *Teeter*, 257 F.3d at 24.[12] Courts have recognized that the failure of a judge to discuss a waiver provision invalidates the waiver provision. *See United States v. Arellano-Gallegos*, 387 F.3d 794, 797 (9th Cir. 2004) (holding that waiver provision unenforceable where "sentencing judge neither addressed the defendant personally regarding the waiver nor determined that the defendant understood the meaning of the waiver"); *United States v. Blackwell*, 199 F.3d 623, 626 (2d Cir. 1999) (holding

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[12] A defendant's signature on a written plea agreement is insufficient to establish a knowing, intelligent, and voluntary waiver of a right, even if the waiver of such right is set forth in the written plea agreement. *See United States v. Bushert*, 997 F.2d 1343, 1352 (11th Cir. 1993) ("We reject the view of the [*United States v. DeSantiago-Martinez*], 980 F.2d 582 (9th Cir. 1992),] court that an examination of the text of the plea agreement is sufficient to find the waiver knowing and voluntary. 980 F.2d at 583. Rather, we agree with the *DeSantiago-Martinez* dissent when it stated 'it is incumbent upon the judge to canvass the defendant in a manner that ensures that the defendant made a voluntary decision based on an understanding of both the nature of the charges against him and the statutory and constitutional rights he is relinquishing.' *Id.*").

that waiver of appeal rights deemed unenforceable where court did not properly ascertain whether defendant understood the nature of his plea or the charges against him).

In the instant case, the judge did *not* specifically inquire at the plea hearing regarding whether Petitioner Stahl understood that he was waiving his right to collaterally attack his convictions and sentences. Although the prosecutor mentioned the waiver at the beginning of the plea hearing, there is nothing demonstrating an on-the-record waiver by Petitioner Stahl of his right to pursue a collateral attack.[11] Notably, the judge questioned Petitioner Stahl about whether he understood that he was

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[11] Petitioner Stahl submits that in the absence of an on-the-record waiver, any doubts concerning the waiver of a particular right should be resolved in favor of the criminal defendant.

waiving his right to *appeal*,[14] but the judge did not question Petitioner Stahl about the collateral review waiver.[15] Petitioner Stahl submits that it is appropriate for the Court to grant this petition for writ of certiorari in order for the Court to consider and articulate the requirements for ensuring that a defendant has knowingly and voluntarily agreed to the waiver of the right to collaterally attack a conviction or sentence (i.e., a judge's on-the-record inquiry of the defendant regarding his or her understanding and

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[14] During the plea hearing, the following exchange occurred:

> THE COURT: Do you understand that in this case, in both cases this plea you are giving up your *right to appeal* all issues except as to the legality of the sentence that might be imposed.
>
> THE DEFENDANT: Yes, I do.

(Pet. App. 19a) (emphasis added).

[15] The waiver of rights cannot be presumed from a silent record. *See Carnley v. Cochran*, 369 U.S. 506, 514-16 (1962).

acceptance of the collateral review waiver).

Accordingly, for the reasons set forth above, Petitioner Stahl respectfully requests the Court to grant this petition for writ of certiorari in order to address these important issues. The need for guidance from this Court on these issues is acute, as the issues have the potential to affect a substantial number of cases in every jurisdiction.

I. CONCLUSION

Petitioner Stahl respectfully requests the Court to grant the petition for writ of certiorari.

Respectfully Submitted,

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Case No. _____

IN THE
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Appendix to
Petition for Writ of Certiorari
to the Florida Second District Court of Appeal

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TABLE OF CONTENTS

No.	Documents	Page
1.	Opinion, Florida Second District Court of Appeal, January 4, 2008	1a
2.	Order Denying Discretionary Review, Florida Supreme Court, June 12, 2008	10a
3.	September 9, 2004, Plea Hearing	12a
4.	Written Plea Agreement	48a
5.	September 9, 2004, Letter from the Prosecutor	58a
6.	State Trial Court's Order Denying Petitioner Stahl's State Postconviction Motion	69a
7.	Petitioner Stahl's State Postconviction Motion	77a
8.	Petitioner Stahl's Amendment to State Postconviction Motion	108a
8.	Excerpts from Petitioner Stahl's Direct Appeal Initial Brief	115a

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DAVID RUSSELL STAHL,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

Case No. 2D06-5803

Opinion filed January 4, 2008.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Hillsborough County; Chet A. Tharpe, Judge.

Bruce G. Howie, Clearwater,
for appellant.

VILLANTI, Judge.

David Russell Stahl appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. After diligent consideration we affirm, but we write to address an issue that has not previously been addressed by this court.

In case 01-CF-005859, Stahl was found guilty by a jury of a lewd or lascivious battery, a second-degree felony. Stahl also had pending against him charges of lewd or lascivious conduct in case 01-CF-001737 and unlawful sexual activity with a minor in case 01-CF-005860, both second-degree felonies. On September 9, 2004, Stahl, himself a lawyer at the time, entered into a negotiated plea agreement and received a postconviction sentencing bargain of six years in prison followed by nine years of sex offender probation.

However, pursuant to the plea agreement, Stahl also pleaded guilty in case 01-CF-001737 to the lesser-included offense of felony battery in exchange for a sentence on that charge of one year and one day in prison, to run concurrently with the sentence in case 01-CF-005859. Pursuant to this same agreement, case 01-CF-005860 was nolle prossed. Importantly, as a condition of the plea agreement, Stahl expressly waived his right to "all post-verdict challenges[1] in case number 01-CF-005859, including but not limited to any motion for new trial, direct appeal, habeas corpus, and/or motion for post-conviction relief, and any appeal, habeas corpus, and/or motion for post-conviction relief in case number 01-CF-001737." Stahl was sentenced in accordance with this plea agreement.

Nonetheless, Stahl filed various postconviction motions, including the instant rule 3.850 motion. In

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[1] The plea form uses the term "post-verdict" presumably because the agreement followed a jury verdict of guilty, but we will use only the term "postconviction" in this opinion because Stahl is attempting to overcome the waiver of his postconviction rights.

this motion, Stahl raised forty-two grounds for relief, including newly discovered claims of fundamental error rendering his sentence in case 01-CF-005859 illegal. However, Stahl's claims relate to acts or omissions allegedly committed by the prosecutor, his lawyer, or the trial court in connection with that case.

All of his complaints involve matters that he was clearly aware of, or should have been aware of, when he entered into the subject plea agreement. Stahl further asserted in his memorandum of law supporting his rule 3.850 motion that his negotiated plea agreement could not bar his right to file this motion. The postconviction court denied the rule 3.850 motion, finding that Stahl entered into a negotiated plea agreement in which he waived his right to file postconviction motions.

"No Florida rule of criminal procedure directly controls a post-conviction sentencing bargain." Leach v. State, 914 So. 2d 519, 522 (Fla. 4th DCA 2005). However, "[a] defendant may waive constitutional,

statutory, or procedural rights during the criminal process." Id. at 521 (citing Miranda v. Arizona, 384 U.S. 436 (1966)). After a jury's finding of guilt, a defendant has a right to appeal and to file postconviction motions, and it may be in his best interest to use those rights as a bargaining chip, Id. at 522. Once a defendant has time to review a plea agreement, discuss it with his lawyer, and consider alternatives, he may waive his right to postconviction motions. Id. at 523.

Moreover, it is well established that a defendant can waive his statutory right to a direct appeal contained in a preconviction plea agreement. See United States v. Cockerham, 237 F.3d 1179, 1181-83 (10th Cir. 2001). Likewise, a defendant can waive his right to collaterally attack his judgment and sentence when the waiver is expressly stated in the plea agreement and he knowingly and voluntarily agrees to the waiver. See Williams v. United States, 396 F.3d 1340, 1342 (11th Cir. 2005). However, ineffective assistance of counsel claims attacking the

advice received from counsel in entering into the plea and waiver cannot be waived. See Nixon v. United States, No. CV206-071, 2006 WL 2850430, at *2 (S.D. Ga. Oct. 3, 2006).

Although Leach addressed the ability to waive a right to appeal, by extension, this concept would also apply to the right to file a rule 3.850 motion attacking a conviction. Stahl had over three months to review the plea agreement, discuss it with his lawyer, and consider other alternatives. Further, Stahl received a reduced sentence on the jury conviction, another pending felony was reduced to a lesser-included offense, and yet another pending felony was nolle prossed altogether as compensation for trading his last bargaining chip -- i.e., all postconviction motions. Therefore, Stahl waived his right to postconviction challenges and received the bargained-for sentences. See State v. Swett, 772 So. 2d 48, 52 (Fla. 5th DCA 2000) (stating that a defendant cannot accept the benefit of the bargain without accepting its burden).

Hence, his only available remedy is to move to withdraw his plea by alleging that it was not knowingly and voluntarily entered or allege that his counsel was ineffective for misadvising him to enter into the plea agreement. See Williams, 396 F.3d at 1342; see also Nixon, 2006 WL 2850430, at *2. In his brief, Stahl complains that his waiver was not sufficient because the trial court did not repeat the specific plea terms verbatim. However, on the record and in Stahl's presence, the trial court conducted a sufficient inquiry pursuant to Florida Rule of Criminal Procedure 3.172(c)(7), as evidenced in the following exchange:

> [STATE PROSECUTOR]: We have offered this [plea agreement] in which Mr. Stahl has waived all post trial challenges, including direct appeal and . . . any post conviction motions including

> habeas corpus, 3.850 and waiving his right to make any challenges in 01-1 737.
>
> . . . .
>
> THE COURT: Do you understand the agreement which your attorney and the State have just presented to me. . . .?
>
> [MR. STAHL]: Yes.

Thus under the facts of this case, as supported by the above record, Stahl's contention has no merit. Furthermore, Stahl agreed to the specific plea terms in the written plea form which he and his attorney signed. Even if Stahl were not a law school graduate, the plea colloquy was more than adequate to refute his claim. In fact, he did not claim not to have understood the plea terms but only that the postconviction waiver should not be effective because the sentencing judge

did not repeat the plea terms verbatim. Moreover, Stahl does not allege that he received any misadvice from his counsel regarding the entry of his plea or the agreement. Therefore, on the record before us, Stahl's waiver is binding; he has not and cannot allege any other basis to avoid its binding effect.

Accordingly, we affirm the postconviction court's denial of this rule 3.850 motion.

Affirmed.

WHATLEY and DAVIS, JJ., Concur

Supreme Court of Florida

THURSDAY, JUNE 12, 2008

CASE NO.: SCO8-205
Lower Tribunal No(s). 2D06-5803

DAVID RUSSELL STAHL vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordere d that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

ANSTEAD, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur.

A True Copy
Test:
/s/ Thomas D. Hall
Thomas D. Hall
Clerk, Supreme Court

(SEAL)
Supreme Court of the
State of Florida

brn
Served:

DAVID RUSSELL STAHL
HON. BILL MCCOLLUM
HON. JAMES BIRKHOLD, CLERK
HON. PAT FRANK, CLERK
HON. CHET A. THARPE, JUDGE

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT CRIMINAL DIVISION

STATE OF FLORIDA **CASE NO.: 01-CF-005859**

Plaintiff

vs. **DIVISION: H**

RUSSELL STAHL,

Defendant.

_____ _____/

(SEAL)
RECEIVED
OFFICE OF
ATTORNEY GENERAL
JUN 03, 2005
CRIMINAL DIVISION

This case came on to be heard before the Honorable Wayne S. Timmerman, Circuit Judge, at the Hillsborough County Courthouse Annex, Tampa, on September 9, 2004, commencing at approximately 8:30 a.m.

APPEARANCES;
Michael Sinacore, Assistant State Attorney,
800 East Kennedy Boulevard,
Tampa, Florida 33602
On behalf of the State

Chip Purcell, Esquire
On behalf of the Defendant
(THE FOLLOWING PROCEEDINGS ENSUED IN OPEN COURT.)

MR. SINACORE: Mr. Stahl is ready.

THE COURT: Come up, Mr. Stahl.

MR. SINACORE: Mr. Stahl is before the Court for sentencing on 01-5859 on Count Three. He also has 01-1737, 01-5860 currently pending. The State and defendant have entered into an agreement, Your Honor to resolve the remaining cases for a sentence on the case the jury found him guilty on and we have put that in a plea letter. Mr. Stahl has signed it Mr. Purcell has signed it. Mr. Stahl is before the Court.

MR. PURCELL: Your Honor, my client has executed a plea form. I have executed it. We also executed the plea letter.

MR. SINACORE: The terms of the negotiation, Mr. Stahl is going to receive – we are going to allow a stipulated lesser charge of felony battery on 1737 for an adjudication one year and one day Florida State Prison. That is to run concurrent on the 01-5859. The State has agreed to a sentence of six years Florida State Prison followed by nine years probation in that case with specified conditions contained in the plea letter. It is a below guidelines sentence. We have offered this in which Mr. Stahl has waived all post trial challenges including direct appeal and any motions for – I believe there is a motion for new trial and maybe a motion for directed verdict, and also any post conviction motions including habeas corpus 3 .850 and waiving his right to make any challenges in 01-1737. In exchange for that the State is agreeing to six years Florida State Prison followed by nine years probation and a concurrent sentence on the other case.

MR. PURCELL: The third case the State is going to nolle pros as part of the agreement.

MR. SINACORE: The State will announce a nolle pros on 01-5860.

THE COURT: What's the number of the case we went to trial?

MR. PURCELL: 5859.

THE COURT: Basically you are entering a plea, Mr. Purcell, in 01-1737 concurrent with 01-5859 which is the case that went to trial. Is that the situation?

MR. PURCELL: Yes, sir.

THE COURT: Mr. Stahl, raise your right hand. Do you swear any testimony you give in this cause will be the truth?

THE DEFENDANT: Yes.

THE COURT: Mr. Stahl, are you under the influence of any drugs, legal or illegal or alcohol which would affect your ability to understand with a we are doing here today?

THE DEFENDANT: No, I am not.

THE COURT: Have you ever been treated for mental or emotional illness?

THE DEFENDANT: No.

THE COURT: Do you understand the agreement which your attorney and the State have just presented to me which calls for a sentence of six years Florida State Prison followed by nine years of sex offender probation?

THE DEFENDANT: Yes.

THE COURT: Do you understand that the charges that you are facing are lewd and lascivious act?

THE DEFENDANT: Yes.

THE COURT: Carries a maximum penalty of 15 years Florida State Prison.

THE DEFENDANT: Yes.

THE COURT: You are also pleading guilty to a charge of felony battery which is a third degree felony carries up to five years Florida State Prison?

THE DEFENDANT: Yes, I do.

THE COURT: Other than this plea agreement which has been presented to me today has anyone threatened you or made you any promises in order to get you to enter this plea in 01-1737?

THE DEFENDANT: No, they have not.

THE COURT: Mr. Stahl, I know you understand this but I am compelled to advise you. Do you understand you are giving up your right to jury trial in

this case 01-1737?

THE DEFENDANT: Yes.

THE COURT: Do you understand you are giving up your right to be represented by counsel at that trial?

THE DEFENDANT: Yes, I do. May I ask a question?

THE COURT: Yes.

THE DEFENDANT: The year and a day is that subject to time served?

MR. SINACORE: He gets credit for every day he spent in jail.

THE COURT: By law you are entitled for credit time served. You are giving up your right to confront witnesses on your own behalf?

THE DEFENDANT: Yes.

THE COURT: Do you understand you are giving up your right to have a jury decide whether you are guilty or innocent of this case?

THE DEFENDANT: Yes.

THE COURT: Do you understand that in this case, in both cases this plea you are giving up your right to appeal all issues except as to the legality of the sentence that might be imposed?

THE DEFENDANT: Yes, I do.

THE COURT: Knowing all these things do you wish to plead guilty on 01-1737?

THE DEFENDANT: That's the year and a day, Your Honor?

THE COURT: Yes.

THE DEFENDANT: Yes, I do. I understand I am allowed to plead guilty on the grounds it is in my best

interest.

THE COURT: Yes, sir, you are. The plea form reflects you are pleading guilty because you feel it is in your best interest to do so. Do you understand that?

THE DEFENDANT: Yes, I do.

THE COURT: Once again you are giving up your right except as to the legality of the sentence imposed?

THE DEFENDANT: Yes.

THE COURT: That's in both cases. Do you understand that

THE DEFENDANT: Yes, Your Honor.

THE COURT: Knowing everything I just told you do you wish to plead guilty to 01-1737?

THE DEFENDANT: Yes, I do.

THE COURT: Are you satisfied with the services flow of Mr. Purcell your attorney?

THE DEFENDANT: Very much so.

THE COURT: Good. Is there anything else you think your attorney ought to do before you enter this plea?

THE DEFENDANT: No.

THE COURT: Is this plea entered with the approval of counsel?

MR. PURCELL: Yes.

THE COURT: Factual basis.

MR. SINACORE: For the record I will cross reference the testimony presented of Amber Menendez in 01-5859 during the jury trial which does constitute a factual basis for this case as well on 01-1737 between December 1, 2000 and the 25th day of December 2000

in Hillsborough County, State of Florida, the victim was age 13 at the time. She was transported there by Adonius Bailey. That location 6627 Marina Point Village Court number 205 Tampa, Florida. Mr. Stahl rented that place. Mr. Martin resided there. Mr. Martin worked as a paralegal for Mr. Stahl. The victim went there and exchanged in sexual acts with Mr. Stahl . She was observed there by Sean Martin who observed the victim in a state of undress. Mr. Stahl made certain statements to Sean Martin later on which the State believed were indicative that he had had relations with Amber Menendez. There is no problem with identification.

THE COURT: All right. Any objections on corrections to the statement of facts?

MR. PURCELL: Judge, we would agree the State could establish a prime facie case for felony battery that would have occurred in Hillsborough County, Florida.

MR. SINACORE: For purposes of the record this is

a stipulated lesser of felony battery. Both parties have agreed to this factual basis being sufficient for a stipulated lesser charge. It is not a category one lesser. It is a stipulated lesser.

MR. PURCELL: That's correct. We are stipulating they could prove a prime facie case of felony battery.

THE COURT: All right, sir. We are dealing with three cases here. 01-1737 which I have repeatedly made reference to because it is on the plea form. We have case number 01-5860 and 01-5859. Which is the case that went to trial?

MR. PURCELL: 5859.

THE COURT: 5859 and 5860 – my question what is happening in 5860?

MR. SINACORE: The State announces a nolle pros.

THE COURT: Thank you. We are dealing with

the case we went to trial and this case where the stipulated sentence is one year and a day with credit.

MR. PURCELL: Yes, sir.

THE COURT: Concurrent with the sentence to be passed as to the case that went to trial?

MR. PURCELL: Yes, sir.

THE COURT: All right. Anything further? Any legal reason why sentence should not now be imposed?

MR. PURCELL: No, sir.

THE COURT: As to case number 01-5859 which is the case that went to trial. As to that case, Mr. Stahl , it is the judgment of the Court that you be adjudicated guilty in that case. As to case number 01-1737 the stipulated lesser included offense of felony battery likewise it is the judgment of the Court that you be adjudicated guilty. Is there anything else you wish to say prior to sentencing?

THE DEFENDANT: Yes. I want to express my remorse for the problems that I have caused by the poor judgment I exercised in this matter. Not just problems for myself but the number of other individuals in the community. I hope that your Honor will consider – I won't get into anything else.

THE COURT: I will consider anything you want to, Mr. Stahl. I have all the time you need. What else would you like to say? I think this is the time for you to speak up and say whatever it is in your heart. Where is the presentence investigation in this case? I remember reading it. As soon as I got it I was very interested in it.

MR. SINACORE: Also for the record we don't know if there is any corrections to the PSI.

MR. PURCELL: The presentence investigation was not materially relevant to this case. I have some issues as to the way that was presented –

THE COURT: Why don't you think the

presentence investigation is relevant to the case?

MR. PURCELL: Because I understood we had a negotiated agreement.

THE COURT: We do. I am interested --

MR. PURCELL: My client was interviewed without my permission for the PSI. I don't want to burden – I don't want to throw a wrench in this, Judge, but your Honor asked me a straight question and I am giving you a straight answer. My client was interviewed without me being able to prepare him for that or without my consent. I understand prior counsel requested a PSI. I understand that's something that subsequent counsel has to deal with. I understand that cat is out of the bag. I did come on prior to the report being prepared and the report was prepared before I had had an opportunity to adequately counsel Mr. Stahl. I think now over the course of a few weeks it is in large part why what I view and what Mr. Sinacore views is a very positive resolution considering the contentious t r a c k the case took. I a m t r y i n g to

give yo u r Honor a straight answer. I would ask you Honor not to put too much weight in the PSI considering where Mr. Stahl's attitude is today.

THE COURT: It is not that I am putting a special emphasis on it, Mr. Purcell. I couldn't help noticing – your client is a lawyer. A good one. When they asked him for his statement as opposed to saying what he just said to me he appeared to blame everything on the paralegal who was the State's witness in this case Mr. Martin. I couldn't understand that. He has had time to reflect. It was obvious during the case to the jury and to me that Mr. Stahl was doing things that were just not only socially unacceptable but criminal. Having sex with minor girls, yet in his statement to whoever conducted this presentence investigation with or without you being present he just simply blamed everything on Sean Martin. I saw no instance where he showed remorse or took any responsibility for this. Maybe he has changed his mind.

MR. PURCELL: That's my point.

THE COURT: I would like to hear From him. I want to know what he really feels. Anything further you wish to say about that, Mr. Purcell?

MR. PURCELL: No, Judge. I appreciate the Court giving me an opportunity to say that. We are in a different position now than we were then.

THE COURT: I intend to give you every opportunity to speak and I want to give Mr. Stahl an opportunity to speak because this is really if you want to call it a turning point, is an understatement, in this life. I am mindful of his age. I am about the same age as he is. I am mindful how devastating this must be not only to him, but I've got a stack of letters from people attesting to very positive things in his life. Including a very compelling letter from his wife. Given the circumstances that we heard during this trial to get a letter from his wife says a lot for her. I don't know whether she is present or not. I don't know Mrs. Stahl. These people all think very highly of him. Some of them talk about him in a professional way, and as I made reference to him a little while ago, Mr. Stahl was

not only a lawyer but he had a reputation of being a good lawyer. Unfortunately, his personal situation the way he lived his personal life has led him to where I see him today which is just tragic. It has got to be dealt with. That's the reason I want to give him an opportunity today to say anything he wants, not only to me. I know where I am and what I am doing, but I've got these people and I have read these letters. Most of them twice. Some of them three times. He has let these people down. I f he wants to say something about that I would be interested in hearing it. You don't have to, Mr. Stahl. I am just giving you an opportunity. This is your time.

THE DEFENDANT: In talking to the correction officer or the probation officer, I did not make the point that he says I made there. He misunderstood me. That's not what I was upset about. That's not what I was talking about at all. I was talking about the fact that – first of all, let me say this. When I said that I am remorseful and that I accept the judgment of the Court and I feel responsible for what has happened in this case. I am talking about the big picture in the

case. I negligently, stupidly, wantonly enabled a young sociopath to reek havoc on society. Of course you are aware of what I am talking about. I enabled to do this. I gave him a car. I gave him an apartment. I gave him a computer.

THE COURT: You did it because you wanted to. You were getting something for it.

THE DEFENDANT: I am going to tell you the truth about everything. I am going to tell you exactly what I was getting for it. This young man came to me. He has been in your court for three years. He is very personable.

MR. PURCELL: Would Your Honor permit me a moment to counsel with my client?

THE COURT: Absolutely.

(THE DEFENDANT CONFERRED WITH COUNSEL PRIVATELY)

THE DEFENDANT: Let me just say I did not intend in talking to the correction officer to blame anything that I have been accused of on Sean Martin. I also think – I am familiar with the evidence and I am becoming familiar with it and the testimony, I think you will find that no one, no one, none of the other suspects or defendants no one has said Russ Stahl knew that Sean Martin was doing these things. The testimony is that it was hidden from me. I did not know these things

THE COURT: You didn't know what?

THE DEFENDANT: I didn't know Sean Martin was procuring this 13-year-old girl to Feldman, Bloomenthal. I was told he was having orgies with the girl at Feldman's house. I didn't know these things.

THE COURT: That's not what you are accused of or convicted of.

THE DEFENDANT: I know that.

THE COURT: You are convicted of you doing those things.

MR. PURCELL: Mr. Stahl was responding to the statement in the PSI.

THE DEFENDANT: I was not trying to say that I didn't do it. I wasn't trying to say Sean Martin was responsible for anything I was arrested for. I do not believe that.

THE COURT: All right, sir. Anything else you wish to say?

MR. PURCELL: No.

THE COURT: Mr. Stahl , anything else?

THE DEFENDANT: No, Your Honor.

THE COURT: Pursuant to my adjudication of guilt in case number 01-5859 any legal reason why sentence should not be imposed?

MR. PURCELL: No.

THE COURT: As to that case and as to case number -- you nolle prossed 5860.

MR. SINACORE: Yes, Judge.

THE COURT: As to case number 01-5859 it is the judgment, order and sentence of this Court you will be confined to a prison term of six years followed by nine years sex offender probation. As to case – I will go into the conditions in a moment. As to case number 01-5859 it is the judgment, order and sentence of this Court that you be adjudicated guilty in that case and you be confined in the Florida State Prison for one year and one day and that's concurrent.

MR. SINACORE: That's 1737 a year and a day.

THE COURT: The plea form is incorrect.

MR. SINACORE: We will have to correct that. You did your colloquy with the right case numbers.

THE COURT: The plea form is wrong. Let me make my sentence very clear. I misread the plea form. As to case number 01-5859 it is the judgment, order and sentence of this Court that you be confined to Florida State Prison for six years followed by nine years of sex offender probation, As to 01-1737 it is the judgment order and sentence of this Court that you be confined to Florida State Prison for one year and one day. That will run concurrently with the sentence in 01-5859.

As to your probation the following special conditions will apply. You shall abide by a mandatory curfew from ten p.m. to 6:00 a.m. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall not live within a thousand feet of a school day care center, park playground, or other places where children regularly congregate. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Within 30 days after release from incarceration you shall enroll in and thereafter remain continuously enrolled in an outpatient sex offender treatment program at your expense. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall actively and in good faith participate i n the treatment program until discharged by the therapist as having successfully completed the treatment program. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall complete sex offender treatment within three years of release from incarceration. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall not have any contact

with the victims K.S. or A.M. which is Amber Menendez and Krystal Saxton, directly or indirectly, including through a third person, unless approved by those victims, your therapist and this Court. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Until successfully completing the sex offender treatment program you shall have no unsupervised contact with a child under the age of 18 without another adult present who is responsible for the child's welfare, has been advised of your crimes and is approved by this Court. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall not work for pay or as a volunteer at any school, day care center, park, playground, or other place where children regularly congregate. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall not use, own or possess any obscene, visual on auditory material, including telephone, electronic media, computer programs or computer services that are relevant to your deviant behavior pattern. Do you under that?

THE DEFENDANT: Yes.

THE COURT: You shall provide two specimens of blood or other approved biological specimen to the Florida Department of Law Enforcement to be registered to the DNA data bank. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall make restitution to the victims for all necessary medical and related professional services relating to physical, psychiatric and psychological care. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall submit to warrantless searches by your community or probation officer of your person, your residence and your vehicle. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: As part of your treatment program you shall participate at least annually in polygraph examinations to obtain information necessary for risk management and treatment and to reduce any denial mechanisms you may have. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: All polygraph examinations must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders and shall be paid for by you. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: However, the results of the polygraph examinations shall not be used as evidence in court to prove that a violation of your community supervision has occurred. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall maintain a driving log and shall not operate a motor vehicle alone without the prior approval of your community control or probation officer. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall not obtain or use a post office box without the prior approval of your community control or probation officer. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall submit to an HIV test at your expense. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: The results are to be released to the victims Krystal Saxton and Amber Menendez. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall be electronically monitored when deemed necessary by the community control or probation officer and his or her supervisor and ordered by this Court at the recommendation of the Department of Corrections. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall pay cost in each case that you plead guilty to in the amount of $370. That's both cases. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall pay cost of prosecution in the amount of three hundred dollars. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall pay restitution to the Crime compensation Trust Fund for any payments awarded in this case under the Florida Crime Compensation Act which is Florida Statute 906. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall pay the cost of investigation in the amount of $130 to the Hillsborough County Sheriff's Office. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Within 30 days after release from incarceration you shall submit to a psychological or

mental health assessment and shall follow through with any treatment recommended by the evaluator at your expense. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall complete any recommended treatment within three years of release from incarceration. Do you understand that'?

THE DEFENDANT: Yes.

THE COURT: Within 30 days after release from incarceration you shall be evaluated for substance abuse and thereafter successfully complete any recommend treatment recommended by the evaluator at your expense. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall have no intentional contact directly or indirectly or through a third person with either Sean Martin or Adonius Bailey. Do you

understand that?

THE DEFENDANT: Yes.

THE COURT: You shall not reside with any person under the age of 18 unless authorized by this Court. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: I think we need to discuss something because in reading the PSI if I am not incorrect I believe Mr. Stahl has grandchildren. Does he not?

THE DEFENDANT: I have one grandchild who is six years old

THE COURT: That child is exempted from the requirement I just mentioned. You are free to reside with your grandchild should you desire or any grandchildren that are born into your family subsequent to today.

THE DEFENDANT: Thank you, Your Honor.

THE COURT: You shall abide by any other condition which this Court finds appropriate to impose. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall be deemed a sex offender and shall fulfill all requirements of Florida Statute 943. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You shall report as required by Section 943 of the Florida Statutes within 48 hours of release from incarceration. Do you understand that?

THE DEFENDANT: Yes..

THE COURT: These terms will be explained to you in more detail and any questions you have will be answered for you by your probation officer at the time

upon which you will go on probation. Anything further?

MR.. SINACORE: I want to make sure the plea letter was signed by Mr. Stahl and Mr. Purcell.

THE COURT: It appears to be signed by Mr. Stahl and Mr. Purcell.

MR. SINACORE: Mr. Purcell has a couple of motions outstanding.

MR. PURCELL: Pursuant to the terms of the agreement we are withdrawing – it is one joint motion, it is a motion for new trial and judgment – motion to vacate the judgment. We will withdraw those pursuant to the terms of this agreement.

MR. SINACORE: Just for the record, Your Honor, I neglected to say before this offer was made after discussions with the victim's families and they were in favor of this resolution in order to bring closure to this case, Your Honor.

THE COURT: This plea agreement was approved by the victims and their families.

MR. SINACORE: Yes, Your Honor.

THE COURT: Mr. Stahl, you have 30 days within which to appeal the judgment order and sentence this Court. If you cannot afford the services of an attorney for purposes of that appeal one will be appointed for you free of charge. Do you have any questions?

THE DEFENDANT: No, Your Honor. Thank you.

THE COURT: Thank you, sir. I am filing the letters that I made reference to. They are going into the court file.

(THE PROCEEDINGS CONCLUDED.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Natalie Lama, AOC Circuit Court Reporter hereby certify that I was authorized to and did report the foregoing proceedings had in the previously-styled cause; and that the preceding transcript attached hereto is a true, accurate, and correct computerized transcription of said proceedings.

I further certify that I am not employed by or related to any of the parties in this matter, nor am I financially or otherwise interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand in Tampa, Hillsborough County, Florida.

/s/ Natalie Lama
Natalie Lama
AOC Circuit Court Reporter

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY CRIMINAL JUSTICE DIVISION

(FILE STAMP)
SEP 09 2004
CLERK

STATE OF FLORIDA CASE NO: 01-5859 (printed)
-vs- 01-1737 (printed)
David Russell Stahl (printed) Division: H (printed)

UNIFORM PLEA, ACKNOWLEDGMENT AND WAIVER OF RIGHTS FORM

CHARGE(S)	MANDATORY MINIMUM	MAXIMUM PENALTY
Lewd Lasc (printed)		15 yr FSP (printed)
Felony Battery		5 yr FSP (printed)

Check either "a" or "b"

__X__ 1(a) I am pleading guilty, and acknowledge (my guilt) *(I feel it is in my best interests to do so.)* (Italicized text was circled on form.)

_____ 1(b) I am pleading nolo contendere, and acknowledge I feel it is in my best interest to do so. *(This item was originally checked and then crossed out.)*

_____ 2(a) I am pleading open to the Court and understand there is no agreement as to what sentence I will receive, and the Court can sentence me within its discretion.

_____ 2(b) I am pleading pursuant to a plea agreement and the terms of that agreement are as follows: *on 01-5859 - 1 yr 1 day on 01-1737 concurrent* (italicized text is handwritten).

FSP 6 yr. (printed) Psychological evaluation and treatment if necessary _____

County Jail_____Probation 9 yr (printed)

Specified Residency_____

Community Control _____

Community Control II _____

Restitution to:_____ in the amount of: _____ to be paid monthly @ _____.

Drug/Alcohol Evaluation (within 30 days) and treatment if necessary (counseling/urine screens)

Community Service_____at _____hours per month

Driver's License Revocation_____

GED _____

Other See Plea Letter (printed)

3. I understand if probation or community control

is part of the plea agreement the court may impose any special conditions it believes it should but such special conditions will be orally pronounced by the Court at the time of sentencing.

4. I understand and agree I am to receive credit for time served of _____day(s).

5. I understand I have a right to plead not guilty and the right to be tried by a jury to determine whether I am guilty or not guilty. I understand I have the right to be represented by an attorney at the trial and if I cannot afford one, the Court will appoint an attorney to represent me. I understand I have the right to compel the attendance of witnesses on my behalf, the right to confront and cross examine all witnesses testifying against me, and the right to remain silent. I understand if I plead guilty or nolo contendere, there will be no trial and I waive all the rights that go along with a trial.

6. I understand I have the RIGHT TO APPEAL the judgment and sentence of the Court within thirty (30) days from the date of sentence. I understand if I wish to take an appeal and cannot afford an attorney to help me in my appeal, the Court will appoint an attorney to represent me for that purpose. I understand if I plead guilty or nolo contendere without reserving the right to appeal, I am waiving my rights to appeal all matters relating to the judgment including the issue of my guilt or innocence. I admit there is a factual basis for the charge(s) to which I am entering a plea.

7. I understand there are facts the State could use to prove the charge(s) against me.

8. I understand if I plead guilty or nolo contendere the judge may ask me questions about the charge(s) to which I have just pled and if I am untruthful, my answer(s) may later be used against me in a prosecution for perjury.

9. I understand if I plead guilty or nolo contendere and I am not a United States citizen, my plea may cause immigration problems, including DEPORTATION, exclusion and problems for adjustment of immigration status pursuant to the laws and regulations governing the United States Naturalization and Immigration Service.

10. I understand if the charge(s) to which I am pleading is a drug related offense my driver's license could be suspended or revoked.

11. I understand my pleading guilty or nolo contendere will result in the Court imposing MANDATORY statutory costs. I also understand my plea may result in the Court imposing certain other costs and attorney's fees and I do not object to the imposition of such costs and fees and I waive my right to a hearing on the imposition of such costs and fees. I have had an opportunity to review the attached Uniform Order Assessing Costs, Fines & Surcharges with my attorney. I understand if I

fail to pay the imposed costs and fees my driver's license may be suspended.

12. I understand a conviction for an offense to which I am pleading guilty or nolo contendere may serve to enhance the sentence for any offense for which I may be convicted of in the future.

13. I am not under the influence of drugs, an alcoholic beverage or medication, but I am taking this medication_____.

14. I do not have any mental illness that would keep me from understanding this plea and its consequences.

15. I certify that no one has threatened or coerced me in any way in order to get me to enter this plea, and I am pleading freely and voluntarily. Other than the terms of the plea negotiation as set forth above (if applicable), no one has promised me anything upon which I have relied in order to influence me to enter this plea.

16. I certify that I have discussed the charges with my attorney including the maximum possible and mandatory minimum (if any) penalties and possible defenses and am fully satisfied with the representation of my attorney. I understand by entering this plea there is no guarantee what gain/credit time, if any, I will receive should I be sentenced to Florida State Prison. I understand prior convictions or treatment as a habitual offender will affect my eligibility to earn gain credit time.

17. I have reviewed my sentencing guidelines score sheet and it is correct.

18. I have reviewed an habitual felony offender/habitual violent felony offender form and understand everything in it. I understand that if sentenced as a habitual felony offender/habitual violent felony offender, I may not be eligible for certain gain time or for treatment programs.

19. I have reviewed the standard terms of probation and I understand I must follow them as well as any special conditions the court thinks are appropriate.

20. I understand no one can accurately predict the actual time I will serve on a sentence and I may be required to serve the entire sentence.

21. I certify that there are not any other witnesses I want my attorney to investigate or call, nor is there any other type of discovery or investigation I want my attorney to do prior to entering this plea

22. I certify that no one, including my attorney, has made any promises concerning any gain time or credit time other than the fact that I am going to receive credit for every day I actually spent in jail on this/these case(s).

9-9-04 (printed)	/s/ D.R. Stahl
Date	Defendant

STATEMENT OF ATTORNEY

I, as the attorney for the above Defendant, state that I have reviewed this plea form with my client and to the best of my knowledge and belief the Defendant fully understands its contents.

9-9-04 (printed)	/s/ M. D. Purcell
Date	Attorney

(Seal)
Great Seal of the
State of Florida

State Attorney
MARK A. OBER
Thirteenth Judicial Circuit
800 East Kennedy Boulevard 5th Floor
Tampa, Florida 33602-4148
(813) 272-5400

September 9, 2004

(FILE STAMP)
SEP 09 2004
CLERK

Chip Purcell, Esquire
18560 N. Dale Mabry Hwy.
Lutz, Florida 33548

RE: STATE OF FLORIDA V. DAVID RUSSELL STALHL
CASE NUMBER: 01-CF-001737; 01-CF-005859; AND 01-CF-005860

Dear Mr. Purcell:

Your client is charged in case number 01-CF-001737 with Lewd or Lascivious Conduct and charged in case number 01-CF-005860 with Unlawful Sexual Activity with a Minor. Your client has been found guilty of Lewd or Lascivious Act in case number 01-CF-005859. Please be advised that in case number 01-CF-001737 your client will be permitted to enter a plea of guilty to a stipulated lesser charge of Felony Battery, for an adjudication of guilt and a sentence of 1 year and 1 day Florida State Prison, concurrent with case number 01-CF-005859.

As part of this plea negotiation, the State will agree to a sentence of six (6) years Florida State Prison followed by nine (9) years probation in case #01-CF--005859, which is currently set for sentencing. The State will announce a Nolle Prosequi in case number 01-CF-005860. As a condition of this plea agreement, your client waives all post-verdict challenges in case number 01-CF-005859, including but not limited to any motion for new trial, direct appeal, habeas corpus and/or motion for post-conviction relief, and waives any

appeal, habeas corpus, and/or motion for post-conviction relief in case number 01-CF-001737. It is the intent of the parties that by entering into this agreement, the disposition of these cases becomes final and binding on the parties upon the Court's acceptance of this agreement.

The following special conditions would be imposed if your client's supervision in case number 01-CF-005859:

1. That he shall abide by a mandatory curfew 10 p.m. to 6 a.m. (F.S. 948.03(5) (a) 1).

2. That he shall not live within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate, as prescribed by the court. (F.S. 948.03 (5) (a)2).

3. That within thirty (30) days after release from incarceration/sentencing he shall enroll in and thereafter remain continuously enrolled in an outpatient sexual offender treatment program at his expense. He shall actively participate in the

treatment program until discharged by the therapist as as having successfully completed the program. (F.S. 943.03 (5) (a)3). He shall complete sex offender treatment within three (3) years of release from incarceration.

4. That he shall not have any contact with the victim (REDACTED) directly or indirectly, including through a third person, unless approved by the victim(s), the defendant's therapist, and the sentencing court. (F.S. 948.03 (5) (a)4).

5. That until successfully completing a sex offender treatment program, he shall have no unsupervised contact with a child under the age of 18 without another adult present who is responsible for the child's welfare, has been advised of the crime, and is approved by the sentencing court. (F.S. 948.03 (5) (a)5).

6. That he shall not work for pay or as a volunteer at any school, day care center, park playground, or other place where children regularly congregate.

(F.S. 948.03 (5) (a)6).

7. That he shall not view, own or possess any obscene pornographic or sexually stimulating visual or auditory material, including telephone, electronic media., computer programs, or computer services that are relevant to the defendant's deviant behavior pattern. (F.S. 948.03(5) (a)7).

8. That he shall provide two (2) specimens of blood or other approved biological specimens to the Florida Department of Law Enforcement to be registered with the DNA data bank. (F.S. 943.325/948.03(5) (a)8).

9. That he shall make restitution to the victim for all necessary medical and related professional services relating to physical, psychiatric, and psychological care. (F.S. 948.03(5) (a)9).

10. That he shall submit to warrantless searches by the community control or probation officer of the defendant's person, residence, or vehicle. (F.S.

948.03(5) (a)10).

11. That as part of his treatment program, he shall participate at least annually in polygraph examinations to obtain information necessary for risk msnagemrnt and treatment and to reduce the defendant's denial mechanisms. All polygraph examinations must be cobducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders, and shall be paid by the defendant. The results of the polygraph examination shall not be used as evidence in court to prove that a violation of community supervision has occurred. (F.S. 948.03(5) (b)1).

12. That he shall maintain a driving log and shall not operate a motor vehicle alone without the prior approval of the community control or probation officer. (F.S. 948.03(5) (b)2).

13. That he shall not obtain or use a post office box without the prior approval of the community control or probation officer. (F.S. 948.03(5) (b)3).

14. That he shall submit to an HIV test at his expense. The results are to be released to victim's K.S. and A.M. (F.S. 948.03(5) (b)4).

15. That he shall be electronically monitored when deemed necessary by the community control or probation officer and his or her supervisor, and ordered by the court at the recommendation of the Department of Corrections. (F.S. 948.03(5) (b)5).

16. That he shall pay costs in an amount to be set by the Court.

17. That he shall pay costs of prosecution in the amount of $300.00.

18. That he shall pay restitution to the Crimes Compensation Trust Fund for any payments awarded in this case under the Florida Crimes Compensation Act. (F.S. 906.17).

19. That he shall pay the cost of investigation in the

amount of $130.00 to the Hillsborough County Sheriff's Office [P.S. 939.01).

20. That within thirty (30) days after release from incarceration/sentencing, he shall submit to a Psychological/Mental Health Assessment and shall follow through with any treatment recommended by the evaluator, at his expense. He shall complete any recommended treatment within three (3) years of release from incarceration.

21. That within thirty (30) days after release from incarceration/sentencing, he shall be evaluated for substance abuse and thereafter successfully complete any recommended treatment program by the evaluator, at his expense.

22. That he shall have no intentional contact, directly, indirectly or through a third person with (REDACTED).

23. That he shall not reside with any person under the age of 18, unless authorized by the sentencing

court.

24. That he shall abide by any other condition which the Court finds appropriate to impose.

25. That he shall be deemed a Sexual Offender and shall fulfill all requirements of s. 943.0435, Florida Statutes. He shall report as required by s. 943.0435(2), Florida Statutes, within 48 hours of release from incarceration/sentencing.

I have enclosed a copy of the guidelines scoresheet for your review. This plea agreement is a mitigation of the recommended range of the sentencing guidelines.

Sincerely,
MARK A. OBER
STATE ATTORNEY

/s/ Michael Sinacore
ASSISTANT STATE ATTORNEY
MS/dsd
Enclosure

I, D. Russell Stahl (printed) , understand that a plea has been negotiated between myself, my lawyer, and the Office of the State Attorney for the 13th Judicial Circuit, Hillsborough County, Florida. This plea negotiation includes, among other things, a term of community control/probation with specified special conditions that I must accomplish in order to successfully complete my term of supervision. I have read the attached special conditions of community control/probation, and I agree to abide by them. I am pleading guilty to the charge because I am, in fact, guilty. I further understand that successful completion of an outpatient sex offender treatment program will require my acknowledgment of responsibility in a group therapy setting for improper sexual conduct.

/s/ D. R. Stahl 9-9-04

Signature of Defendant/Date

I, M. D. Purcell, Jr (printed), being attorney of record for the above named defendant, state that I have

personally reviewed the attached Special Conditions of. community control/probation with my client, and that to the best of my knowledge and belief he fully understands the Special Conditions of community control/probation.

/s/ M. D. Purcell 9-9-04

Signature of Attorney/Date

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA
Plaintiff

CASE NOS.: 01-CF-001737
01-CF-005859

vs.

DIVISION: H

DAVID RUSSELL STAHL,
Defendant.
_____/

(SEAL) FILED
CLERK OF CIRCUIT
2006 NOV 30
PM 3:58
HILLSBOROUGH
, CO , FL

ORDER DENYING MOTION FOR POSTCONVICTION RELIEF

THIS MATTER is before the Court on Defendant's Motion for Postconviction Relief, filed on

May 8, 2006, and Motion to Amend Rule 3.850 Motion, filed on July 10, 2006[1]. After reviewing the Defendant's Motions, court file and record, the Court finds as follows:

In case 01-CF-005859, Defendant was adjudicated guilty as charged by a jury of Lewd and Lascivious Act (Sexual Activity) (Count Three) on June 18, 2004. (See Case Progress, attached). A Criminal Punishment Code Scoresheet ("Scoresheet") was prepared for sentencing. (See Scoresheet, attached).

Defendant had previously been charged with Lewd or Lascivious Conduct in case 01-CF-001737 and Unlawful Sexual Activity with a Minor in case 01-CF-005860. (See Informations, attached).

On September 9, 2004, Defendant signed a plea

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[1] Defendant has also filed a Correction of Motion for Postconviction Relief, June 20, 2006, and a Memorandum of Additional Authority in Support of Defendant's Supplemental Grounds of His Motion for Post-Conviction Relief *(3.850)*, filed on August 30, 2006.(See Correction of Motion and Memorandum of Additional Support, attached.

agreement. In exchange for pleading guilty in case 01-CF-001737, he received a sentence of one year and one day Florida State Prison ("FSP") in case 01-CF-001737, a sentence of six (6) years FSP, followed by nine (9) years sex offender probation, in case 01-CF-005859, to run concurrently with case 01-CF-001737, and the Office of the State Attorney *nolle prossed* case 01-CF-005860. As part of the plea agreement Defendant expressly waived his right to challenge his convictions in cases 01-CS-001737 and 01-CF-005859, including any right to a direct appeal, habeas corpus or post-conviction relief. (See Plea Agreement, Judgments and Sentences, attached).

In the instant Motions, Defendant alleges forty-five (45) separate grounds for post-conviction relief.[2] Defendant requests that this Court immediately discharge him, or in the alternative, grant him a new trial or reduce his sentence. (See Motion for

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[2] The grounds are lettered A thru QQ in Defendant's motions.

Postconviction Relief and Motion to Amend Rule 3.850 Motion, attached.)

Legal Standards

A defendant may make a sentencing bargain to waive the right to appeal a viable issue in order to take advantage of favorable terms offered by the prosecution. See Leach v. State, 914 So.2d. 519, 523 (Fla. 4th DCA 2005); Garvin v. State, 643 So.2d. 103, 104 (Fla. 4th DCA 1994). To be enforceable, the post-conviction sentencing bargain, like a plea bargain, must be voluntary, knowing, and intelligent. Leach, 914 So.2d. at 523. In making this determination the trial court must consider all relevant facts surrounding the waiver, including the nature and terms of the agreement, and the age, experience and background of the accused. Id.

Analysis

Defendant is an experienced attorney. (See Sentencing Transcript, page 12, attached.) He was adjudicated guilty of Lewd and Lascivious Act (Sexual

Activity) (Count Three) on June 18, 2004. (See Case Progress, attached.) He did not sign the plea agreement until nearly three months later, on September 9, 2004. (See Plea Agreement, attached.) This delay allowed Defendant sufficient time to examine his alternatives and not "rush" into any agreement without fully understanding the consequences of such agreement, including the express waiver of any post-verdict challenges. (See Sentencing Transcript, page 12, attached.)

At the sentencing hearing, the prosecutor, Michael Sinacore, Esquire ("Mr. Sinacore"), stated that the State's offer was in exchange for Defendant waiving his right to any post-verdict challenges to the convictions, including Rule 3.850 motions, and expressly informed the Court that the agreement was offered, in part, because the victim's families wanted closure to the case. (See Sentencing Transcript, pages 2-3 and 25-26, attached.) Furthermore, the Court twice asked Defendant whether he understood that by

signing the plea agreement he was waiving his right to appeal. He replied that he did. (See Sentencing Transcript, page 6, attached.)

From the record it is clear that Defendant voluntarily accepted the plea agreement, including the waiver of his right to challenge his convictions.

Conclusion

It is often in the best interest of the defendant and the prosecution to reach an agreement concerning the outcome of a case rather than extend litigation by appeal over the possible errors that may have occurred up to that point. See Leach v. State, 914 So.2d. 519, 522 (Fla. 4th DCA 2005). In the instant case, after he had been convicted, Defendant traded in his last bargaining chip, his right to postconviction relief, to receive a more favorable sentence, and the State as part of the bargain received assurance that this agreement would provide closure for the State and the victims. To now allow Defendant to ignore his express waiver of his right to postconviction challenges would

deprive the State of the benefit of their bargain. Consequently, pursuant to the plea agreement, Defendant has waived his right to file a Rule 3.850 motion for postconviction relief.

It is therefore **ORDERED AND ADJUDGED** that Defendant's Motions are hereby **DENIED**.

Defendant has thirty (30) days from the date of this Order within which to appeal

DONE AND ORDERED in Chambers, at Tampa, Hillsborough County, Florida, this 30th day November, 2006.

/s/ Chet A. Tharpe, Circuit Judge

CHET A. THARPE, Circuit Judge

Attachments

Correction of Motion for Postconviction Relief

Memorandum of Additional Authority in Support of Defendant's Supplemental Grounds of His

Motion for Post-Conviction Relief (3.850)

Case Progress

Criminal Punishment Code Scoresheet

Informations (2)

Plea Agreement

Judgments and Sentences (2)

Motion for Postconviction Relief

Motion to Amend Rule 3.850 Motion

Sentencing Hearing Transcript (September 9, 2004)

Copies furnished to:

David Russell Stahl (DC# T39837)

Wakulla Correctional Institution

110 Melaleuca Drive

Crawfordville, Florida 32327-4963

Office of the State Attorney, Division H

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

DAVID RUSSELL STAHL,)
DEFENDANT)

(SEAL) Provided to Holmes CI on May 08, 2006 for mailing

v. CASE NO.: 01-CF-5859 ET. AL.

STATE OF FLORIDA, DIVISION H
PLAINTIFF)

_____/

MOTION FOR POSTCONVICTION RELIEF

Comes now, David Russell Stahl, defendant, and moves this court for Postconviction Relief under the provisions of Fla. R. Crim. P. 3.850 and pursuant to § (a). As grounds, defendant provides as follows:

1) The judgment was entered or the sentence was imposed in violation of the Constitution Laws of the United States and the State of Florida.

2) The Judgment or Sentence is otherwise subject to collateral attack.

3) Defendant was convicted in the Thirteenth Judicial Circuit of Hillsborough County, Florida. In the above cause as a direct result of trial by jury on June 18, 2004. He did not testify. The conviction was for F.S. 800.04.

4) Defendant was sentenced to 6 years D.O.C., followed by 9 years Probation in case no.: 01-CF-1737. To run concurrently with each other. Pursuant to a Sentence Agreement on September 9, 2004.

5) On April 27, 2005, Defendant filed a Petition for Belated Appeal to the appropriate District Court of Appeal. The DCA denied the Petition on September 22, 2005.

6) In February, 2008, Defendant filed a Writ of Habeas Corpus in the United States District Court for

the Northern District of Florida. The cause was transferred to the forum of the Middle District Court.

7) On April 14, 2006, the Court, dismissed Defendant's Petition with out prejudice, and further instructed Defendant to exhaust his postconviction remedy pursuant to Rule 3.850.

8) Defendant has not previously filed any motion pursuant to Fla. Crim. P. 3.850.

9) Petitioner's Motion for Habeas Corpus relief was denied without prejudice April 4, 2006 in an Order attached, that held that his Petition contained exhausted and un-exhausted claims and that Defendant had "on available State remedy", via a Rule 3.850 Motion, describing his claim as partially exhausted implies that the Court believed that the Defendant's belated appeal was not defaulted by the waiver of September 9, 2004, (which was filed with the Habeas Corpus and the Court allured to in it's Order).

10) Defendant submits that the September 9, 2004, cannot bar his Rule 3.850 Motion for a second reason,

the State is "judicially estopped" from arguing it as a bar. In his Petition for belated appeal the State argued successfully that Defendant had a right to appeal his conviction but failed to file a Notice of Appeal within thirty days. It would be an "inconsistent claim", barred by the doctrine of judicial estoppel if the State now argued that the September 9, 2004 was a procedural bar to postconviction relief.

11) Third, Defendant submits that few of his claims can be defaulted. His Motion to Dismiss the information on fundamental grounds can be brought anytime, as can his newly discovered evidence claim and his attack on the legality of the sentence. His Jackson ·v· Virginia claims that the evidence supporting the Statement of Particulars is insufficient cannot be defaulted. This leaves his Strickland claims, which Judge Lazzorra described as unexhausted, (implying that the others were exhausted). Defendant interprets his Order as encouraging Defendant to bring all claims in this Motion. Finally, Defendant brings a

handful, actually closer to two handfuls, of miscarriage of justice claims, fundamentals and structural errors which excuse procedural default and failure to default. Defendant will refer to them as Schlup/Fulminonte claim because they are prejudicial per se., i.e., presumed to have caused convictions. As such they allow Defendant to pass through the Schlup gateway, i.e., they excuse procedural default and failure to exhaust. This assumes procedural default apparently Judge Lazzorra has held that Defendant is not in state procedural default.

10) This Honorable Court is familiar with the facts. Defendant will present grounds in so far as possible in chronological order.

11) "A" - Defendant moves to dismiss the information on the grounds that it is based in material part on falsified and fabricated evidence. The information is based on "received testimony of a material witness", Saxton, taken April 12, 2001. In it she makes it clear that she doesn't remember if count

III occurred when she was 14 or 15 years of age. (At the trial this changed to 13 or 14). The State asks her if she remembers an auto theft. She does, she is told it occurred November 27, 1999 and asked to relate count III to a three month period ending November 27, 1999. She responded "Yeah". The Tampa Police Department Auto Theft Report was a fabrication. The theft occurred in 1998. Defendant went to Martin's apartment to help recover the car.

12) The information must be dismissed for a second reason. After responding "yeah", Saxton recants, saying she has "no clue" when count III occurred. This is a second and independently sufficient reason for dismissing the information and happens to be the basis of the Sistrunk -v- Armenakes " newly presented (as opposed to newly discovered evidence) which excuses default. The April 11, 2004 was concealed from Defendant until December, 2005. It is crucial to this motion's claim that counsel assisted the State,

functioning as a sort of associate prosecutor in what will be shown to be a show trial.

13) "B"- Judge Espionsa committed fundamental error, prejudicial per se., under the Fourteenth Amendment (according to Justice Rehnquist) when he failed to inquire into "potential conflict" which he "knew of or should have known of" involving counsel and the State's Attorney Office. In a well publicized law suit brought by a Tampa Police Department detective, they were accused of committing crimes together. The State Attorney himself was implicated. The lurid details were explored in a Channel 13 two-part investigative report.

14) "C"- Counsel was ineffective in failing to advise the Court of its duty to hold such a hearing and in allowing the Court to substitute him and become attorney of record in lieu of Norman Cannello, Esq.

15) "D"- Counsel had been an associate in Division H, the sex crimes division with the prosecutor until a year before Defendant retained him. He dubbed Defendant,

hereafter "DEF", into backing into believing that the trial would be continued so that his defenses would be prepared, then told him the night before trial that he would not ask for a continuance and that DEF was being railroaded. The Court does not want to read a 200-page Rule 3.850 Motion. DEF will try to be brief in his explanation of counsel's lack of preparation. The details will appear in numerous grounds. Under the fabric "ineffective assistance of counsel", the discovery done by the previous attorney had no value as discovery. Counsel refused to redepose the witness to develop DEF's defenses to Saxton and Menendez. The State had filed a Notice of intention to produce Williams Rule evidence regarding Menendez. Counsel had failed to have this heard to determine what evidence the Court would admit.

16) "E" - The morning of trial DEF brought Chip Purcell, Esq and asked for Leave to Substitute him for counsel. He filed Pro Se Motions explaining what he had to be done to prepare his defense. He asked for a

one month continuance. Counsel was ineffective and disloyal in failing to adopt these motions and in failing to advise the court that it was error, prejudicial per se., mandating new trial. To deny a Nelson hearing and Motion for Continuance Hearing.

17) "F"- As a result of this ineffectiveness the Court committed fundamental error under the Fourteenth Amendment in failing to hold a Nelson Hearing and in ordering DEF to stand trial represented by an attorney who had allied himself with the State.

18) "G"- When the Prosecutor asked to introduce the testimony of Menendez, counsel requested Williams Rule Instruction, (the limiting instructions). The Court agreed it should be given but did not give it because counsel did not have it prepared. Counsel was ineffective in not advising the Court that failure to give it was prejudicial per se., mandating new trial

19) "H" As a result of this ineffectiveness, the Court committed fundamental error under the Fourteenth Amendment, prejudicial per se., and presumed to have

caused conviction by failing to give the Williams Rule Instructions.

20) "I" - The Court erred fundamentally in admitting the Williams Rule evidence. It became a trial within a trial, comprising 62% of the evidence and proved itself to be irrelevant. The Federal cases agree that the purpose of Williams Rule evidence is to show absence of mistake. Martin and Menendez testified that she held herself out to her many customers as an adult prostitute. Martin testified that everyone believed she was an adult. Consequently the evidence did not show that DEF sought out underage girls for sex. The State and Federal cases also agree that Williams Rule evidence must be well proven. Martin testified she denied sex with DEF. Its admission denied DEF a fair trial under the Fourteenth Amendment.

21) "J" - Counsel asked for leave to cross-examine Menendez re motive for testifying against DEF. He knew that she told the police that she was pregnant at

thirteen with her adult paramour. Had they intimidated her by threatening to prosecute him? The Court denied this cross-examination on the grounds of the Rape Shield Law which doesn't apply to FS 800.04. (Illegible text) failing to allow cross-examination re motive was fundamental error, prejudicial per se. Counsel was ineffective in failing to make a proffer of the cross-examination.

22) "K"- As a result of this ineffectiveness the Court advised the cross-examination, erring fundamentally and denying DEF a fair trial under the Fourteenth Amendment.

23) "L"- When Counsel put on testimony against DEF and DEF asked to represent himself, Counsel was ineffective in allowing the Court to advise DEF that self-representation would result in his loss of the right to raise ineffective counsel on appeal. He had a duty to advise the Court that this was incorrect and violated DEF's rights under Faretto.

24) "M"- As a result of the ineffectiveness the Court committed the above fundamental error under the Fourteenth and Sixth Amendment, denying DEF a fair trial.

24) "N"- Counsel failed to request lesser includeds. There were four category II lesser includeds to FS 800.04 and evidence was adduced by the State of three of the four -- attempt, simple battery, and lascivious and unnatural act. By failing to request the three, Counsel denied DEF his right to a jury pardon, (Wimberly). This denied DEF a fair trial under the Fourteenth Amendment. Evidence of attempt: testimony that DEF took Saxton to an apartment to have sex and left contraceptive wrappers more than once. Saxton said she had intercourse once with DEF. Evidence of simple battery. Saxton testified about sexual acts with DEF. No sexual act can be consented to under FS 800.04. Thus the Count III acts could have been considered simple battery, lascivious and unnatural act because of age disparity, jury could have

considered Count III "unnatural" which is defined in the Statute as "not normal".

25) "O" - The prosecution introduced photos of Menendez and Saxton which he knew predated the time the offenses were alleged to have occurred, showed the two as 11 or 12 years of age and were highly inflammatory. He did this when he had contemporaneous photos available. This misconduct deprived the DEF of a fair trial under the Fourteenth Amendment and shocks the universal sense of conscience,. (It's comparable to being a prosecution on falsified evidence.) He suborned (sic) testimony from the two that the photos showed them as they looked at time of offenses.

26) "P" - The Court committed fundamental error denying DEF a fair trial under the Fourteenth Amendment by admitting the photos over objection.

27) "Q" - Counsel was ineffective in failing to advise the Court that their admission was prejudicial per se ... and in failing to obtain the photos through discovery and exclude them (after dating them), through a

motion in limine. He was ineffective in not moving for a mistrial and curative instruction. This is a more serious Fourteenth Amendment violation that the typical case of irrelevant, gory victims photos because photos misled the jury about the appearance of the two and were in fact the only evidence to support the State's Williams Rule case that DEF consciously sought out under age girls for sex.

28) "R" - The Court committed fundamental error by not conducting a Richardson inquiry when counsel filed a motion four months before trial that indicated that DEF did not have all the evidence. (Fourteenth Amendment).

29) "S" - Counsel was ineffective in failing to ask for a hearing. DEF remembers attending a hearing and reading the transcript of it afterwards. DEF remembers the prosecutor saying at the hearing that the State has given DEF all its evidence in all the investigations, DEF has been advised that all evidence of the hearing has disappeared. If the transcript exists or can be replaced it shows that counsel was ineffective

in not asking the Court to conduct a Richardson inquiry to determine if non-production (disappearance) of the evidence prejudiced DEF.

30) "T" - The evidence has not all disappeared. DEF understands that Purcell has a small box full, (the amount shown to DEF by Connello and Gissendonnes). In December, 2003, DEF requested all evidence in the two cases referencing the case numbers and was offered 14,330 pages and some sixty discs and tapes for $3,600.00. This evidence necessarily includes exculpatory evidence, Menendez accused DEF of oral sex. We know this because he was charged with it. All of the evidence given to DEF in Menendez denies oral sex. (It is post arrest evidence.) Saxton told Detective Grow that Count III occurred in St Petersburg. We do not have that evidence. It might implicate Blumenthal who was also a 60 year old attorney. It is impeaching because it contradicts her April 11, 2001 which puts Count III in Tampa. Any evidence of the two with other DEFs and suspects is admissible as Reverse

Williams Rule evidence to show possibility of confusion and misidentification.

31) "U" - The prosecution was invidious and selective in violation of the Fourteen Amendment requiring dismissal of the information. Six affluent men in their fifties and sixties were prosecuted for having sex with several underage prostitutes. The investigation revealed that ten to twenty young men, all impecunious, had also had sex with them. Two young adults had impregnated two of the girls Saxton and Menendez. Five had raped Menendez while she was on Rufanol. The State did not prosecute them although they were similarly situated but selected the six men because of their age and ability to pay attorney's fees.

32) "V" - Counsel agreed to move to dismiss the information for selective prosecution but was ineffective in failing to do so. The prosecution was selective and violated DEF's rights under the Fourteenth Amendment.

33) "W" - Norman Cannello, Esq. was ineffective in refusing DEF's request that he file a motion to dismiss

for selective prosecution. He tried to persuade DEF that there was no such thing.

34) "X" - Counsel was ineffective in failing to request a hearing on the State's notice to introduce Williams Rule evidence in case number #1707. This was largely devoted to DEF's alleged flight. Counsel failed to exclude this evidence although Detective Greco testified that there was no evidence of flight on DEF's part. As a result of counsel's ineffectiveness, Martin testified that DEF left town with him before arrest warrants were issued. DEF. Did this to learn the extent of Martin's activities. He turned himself in as soon as a warrant was issued. Counsel's ineffectiveness denied DEF a fair trial under the Fourteenth Amendment and probably caused his conviction.

35) "Y" - The prosecutors put on the testimony of Saxton after she testified that she had intercourse once with DEF in an apartment. He asked her how many times she had been with DEF. She said she didn't know. He asked her what they did together. She said

they went shopping, ate, she had her nails done. That was the extent of her testimony on the two subjects. Counsel under the guise of cross-examination asked Saxton if it were not true that she told the police about Count III. She said it was. This did not impeach her but reinforced the State's case. Then he asked a series of questions, prefaced with the words, "isn't it time that....." These questions established that Saxton was DEF's mistress and he was certainly entitled to sex. Some of these questions indicated that counsel believed that Saxton "didn't always have sex with DEF." This questioning denied DEF a fair trial under the Fourteenth Amendment and probably caused his conviction.

36) "Z" - The prosecutor put on the testimony of Saxton that she had intercourse with DEF once at Dolphin Point or Heron Point. He did not advise the (illegible text) that she had testified three and a half years earlier and closer to Count III that it occurred at DEF's office ten miles away and outside the geographical limits of the Statement of Particulars.

DEF submits that the prosecutors must have known that counsel could not impeach Saxton with the April 11, 2006 or he would not have committed this Giglio violation. It violated DEF's Fourteenth Amendment right to a fair trial mandating new trial.

37) "AA" - The evidence was constitutionally insufficient to support the Statement of Particulars requirement that Count III occurred after March 10, 1999. Saxton testified that she did not remember whether Count III occurred at Heron Point or Dolphin Point and whether she was 13 or 14 years of age. Martin testified that DEF brought Saxton to Heron Point when he lived there and that she was there on November 27, 1979. He testified that they left spermicide wrappers. Leases in evidence showed Martin moved out of Dolphin Point and into Heron Point in November, 1985. The testimony does not exclude the possibility that Count III occurred between November, 1995, and March 10, 1997 when Saxton was 13 years old and Martin lived at Heron Point. This assumes that the wrappers are evidence of Count III.

Saxton testified about one episode of intercourse with DEF, (Count III). If the wrappers are not considered evidence of intercourse, Count III could have happened any time from June 1995 when she turned 13 and March 10, 1999. DEF submits that the wrappers are not evidence of intercourse, only the intent or attempt to have it.

"BB" 38) - The prosecutor put on cell phone records from DEF's cell phone to Saxton. Martin testified that DEF brought her to his apartment. The jury probably believed the two phone (illegible text) were related. In fact, DEF made none of these calls. Counsel was ineffective in failing to put on DEF's employees, Martin's co-workers, who made all the calls. This ineffectiveness probably caused DEF's conviction.

"CC" 39) - Counsel was ineffective in failing to cross examine Saxton regarding her testimony that Count III occurred at "Dolphin or Heron Point". He alluded to her April 11, 2001 testimony but did use it to cross examine her. When she testified in it that she had intercourse once with DEF at his office. This

ineffectiveness allowed the prosecutor to commit the aforementioned Giglio violation. "Failure to cross examine is a constitutional violation of the first magnitude." Cronic. Counsel's ineffectiveness probably caused DEF's conviction.

"DD" 40) - DEF is entitled to specific performance of the October 9, 2004's assurance of a "mitigation of the recommended guidelines." Under Florida Law all mitigations of the guidelines must comply with F.S. 923. Which requires that they be downward departures from the lowest permissible sentence, which in turn is defined as the lowered or "minimum sentence the trial court may impose." That was 56-288-75 or 21 months (15.5 with the .75 mitigation). DEF does not lose his right to a mitigated sentence because the Court failed to calculate the minimum sentence correctly, assessing discretionary victim points (illegible text) and 15 points for an additional offense which was an illegal conviction.

41) "EE" - The DEF has suggested that counsel assisted the prosecutor. The show trial aspect of the

trial became clear in the testimony of Bailey, a defense witness. He began by testifying that DEF picked up Menendez and returned her in an hour and a half; she was carrying bags of clothes and said DEF had bought them for her. She was living with her parents but told DEF that she was homeless and had only the clothes on her back. He had a receipt for the clothes (26 items, for $76.00) December 7, 2000. Bailey testified he had just gotten out of jail. Counsel showed DEF a printout indicating that he had been released December 4, 2000. Bailey testified mistakenly that he got out of jail after Christmas. Counsel made no effort to correct this error and held the receipt in the air as if he didn't know how to introduce it. The prosecutor took it out of his hands and put it in evidence, saying to the jury, "He must have bought clothes for another girl." This misstatement of the facts undermined DEF's defense to the Williams Rule testimony and shocks the universal sense of conscience, requiring dismissal of the information.

42) "FF - Then counsel resumed his role as associate prosecutor and asked Bailey if DEF had a reputation for dating underage girls.

In a real trial the prosecutor would have objected to this question since it was clearly improper. DEF has shown above that his efforts were carefully coordinated with counsel's (Saxton testimony). He did not object because he knew how Bailey would answer, that he would say "yes". DEF did have such a reputation. Counsel had met recently with Bailey, twice, and knew what his testimony would be. The innocent explanation for the above would require that Bailey change his story at trial and the prosecutor wasn't paying attention to counsel's questions and neglected to object.

Bailey's testimony was perjurous. If cross-examined by counsel, he would have admitted that (a) He knew all his acquaintances names and (b) He could not name one who told him DEF had dated an underage girl.

Counsel's ineffectiveness denied DEF a fair trial under the Fourteenth Amendment and probably caused his convictions.

43) (GG) · Counsel was ineffective in not interviewing and subpoenaing Douglas, who testified at DEF's Bar trial August 10, 2005 that she and Saxton were on the scene in "1977 and 1995 when Martin lived in Dolphin Point." That she lived there with him for a short while. She was under State subpoena at the trial of June, 2004 and available to testify. Her testimony would have impeached Martin's testimony that DEF brought Saxton to Heron Point and that the auto theft occurred there.

44: "HH" · Counsel was ineffective in failing to impeach Saxton with her testimony of April 11, 2001 and her June, 2003 deposition, that she lived with Martin at Dolphin Point. This would have impeached her testimony and Martins that Count III and the auto theft occurred at Heron Point.

45) "II" Counsel was ineffective in failing to argue that the auto theft report in evidence was fabricated.

Page four (4) of the report is an obvious fabrication because Officer Lastras' handwriting does not line up with the line on the page and has obviously been projected rather than written. This would have impeached Martin and Saxton. His failure to do so probably caused DEF's conviction.

46 "JJ" - During the trial, Channel 13 ran a news story accusing DEF of procuring girls over the net. Counsel was ineffective in failing to move for mistrial or take any steps to protect DEF, causing his conviction.

47 "KK" - Counsel was ineffective in closing in telling a middle class jury "my client is a millionaire" to assure his conviction.

48 "LL" - Counsel was ineffective in failing to convey the State's plea offer. He advised DEF the night before the trial that the state was offering sex offender probation. After trial attorney Purcell advised the DEF the State had offered him felony battery probation before trial. This offer was never conveyed to DEF.

49 "MM" - Counsel was ineffective for putting on the defense to Menendez as shown above and further in failing to subpoena the clothes DEF brought for her from her three residences. They were store labels and would have matched the receipts in evidence. This caused DEF's convictions.

50 "NN" - Counsel was ineffective in failing to put on the defense to Saxton which was that she was coerced to testify against DEF by the police. Shortly before her arrest, Douglas, Saxton's adult girlfriend, called DEF and told him she was being threatened with revocation of her felony probation if she didn't make a case for the police. Martin had testified the above. Douglas brought the police to Saxton. The above is the only plausible explanation for why Douglas did this. If she had denied the phone call, DEF would have been able to impeach her with his testimony. This was the reason for Saxton's perjurous incertitude. Counsel failed to show this relationship between the two cases. Counsel's ineffectiveness in this matter probably caused DEF's conviction.

FOOTNOTES

1. The Attorney General took the position that DEF had the right to appeal his conviction and was not barred or defaulted by September 9, 2004 because the Court so ruled at the close of the sentence hearing.

2. Whenever DEF alleges ineffectiveness of counsel in this motion he means thereby to allege that it denied DEF Sixth and Fourteenth Amendment rights and satisfied the two-prong test of Strickland. DEF means by using the language "probably caused DEF's conviction" that it also satisfied the more stringent Schlup test. Strickland requires a "reasonable probability; Schlup seems to require an actual probability. DEF understands this to mean that the act of ineffectiveness must be a sine qua non of conviction. (The Schulp gateway excuses procedural default and failure to exhaust because of miscarriage of justice).

3. DEF told counsel months before trial that Russ Stahl, Jr. and Aileen Gonzalez would testify that

Martin had access to DEF's cell phone. Both were available at trial.

4. Counsel was ineffective in failing to depose Bailey. A deposition would have allowed him to impeach Bailey if he changed his testimony or rather if he testified that DEF had such a reputation after deposing that he did not.

5. At least a year before trial DEF told counsel about Douglas' phone call telling him the police were (illegible text) her to make a case against DEF. He advised counsel to interview and depose her.

6. This entitlement is clear from the face of the record.

RELIEF REQUESTED

DEF requests discharge for seven independently sufficient reasons, all recognized by the United States Supreme Court.

a) The evidence was constitutionally insufficient.

b) The prosecutor engaged in wholesale suppression of the evidence. DEF has yet to see any pre-arrest evidence in case number 1707.

c) The information was based on fabricated evidence.

d) The information was based on recanted testimony.

e) The case cannot be returned because exonerating evidence is no longer available (Menendez' 26 items of clothes).

f) The prosecutor's misconduct shocks the universal sense of conscience.

g) DEF has already served a legal sentence.

DEF asks for Order setting aside 01-CF-1737 as illegal. In the alternative, DEF asks for a new trial on the remaining grounds, which deal with ineffective assistance of counsel and fundamental error. As an alternative, DEF asked for reduction of his sentence.

DEF requests a preliminary hearing at which the following issues are decided.

a) Whether a rule 5.850 is an available remedy for DEF and if so, on what claims.

b) Whether DEF is minimally entitled to a new trial based on the record. DEF submits that most of his grounds do not require an evidentiary hearing. Such as failure to grant a Nelson hearing. Failure to give the Williams Rule instruction, failure to request lesser included, these are fundamental errors, mandated new trial.

Unnotarized Oath:

Under penalty of perjury, I declare that I have read the foregoing motion and that the facts stated in it are

true. I make this declaration n this 5th day of May, 2006.

Respectfully submitted, /s/ D. R. Stahl, Holmes Cl.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

DAVID RUSSELL STAHL,

FILED CLERK OF COURT
2006 JUL 13 AM 11:54
HILLSBOROUGH CO., FL
CIRCUIT CRIMINAL

Defendant,

v. Case No.: 01-CF-5859, et. al.

Division: "H"

STATE OF FLORIDA.

Plaintiff,

_____ _____ _____ /

AMENDMENT TO R. 3.850 MOTION

Comes the Defendant and files the following grounds to his R. 3.850 Motion:

Claim "00." Defendant has three grounds for vacating the sentence and reducing it to 15.5 months;

to wit, A. specific performance. Defendant is entitled to specific performance of the Court's assurance in the 9/9/04 of a sentence which is a "mitigation of the recommended guidelines." Defendant is entitled to it because he pled guilty to Case No. 1707 as a quid pro quo for the assurance. Santobello v. N.Y., 492 S. Ct. 495; Goodwin v. State, 427 So.2d 1089 (4th DCA 1988).

A Mitigation of sentence may only be given in compliance with F.S. 921.0026 which requires all felonies but capital felonies must comply with its terms and defines a mitigation of a sentence as a downward departure from the lowest permissible sentence, which in turn is defined as the "minimum sentence the Trial Court may impose." R. 3.704(25). As a result of counsel's ineffectiveness, the Court erroneously believed that victim injury points were not discretionary. Lowman v. State, 720 So.2d 1105 (2nd DCA 1998) indicates they are discretionary. The 18 points assessed for Case No. 1707 were illegal under R. 3.170(A) since not for a legal conviction: (A lesser

included or lesser degree of F.S. 800.04) Defendant is entitled to a 25% downward departure from the minimum sentence the Court could have imposed which was 20.5 months. 56·28x.75x.75=15.5 months.

There is no ambiguity here. If there were, it would have to be resolved in Defendant's favor. Forker v. State, 830 So.2d 192 (2nd DCA 2002). No Florida case has permitted a mitigated sentence which was not a downward departure from the lowest permissible sentence.

B. Score sheet error. The Defendant did not plead guilty and enter into a sentence bargain pursuant to Leach v. State, 914 So.2d 519 (4th DCA 2005). Consequently, he is entitled to have his score sheet corrected if the error is clear from the face of the record. The assurance of a mitigated sentence and the 25% mitigation is in patent contradiction with the scoring of 80 discretionary victim injury points. Forker v. State, 830 So.2d 172 (2nd DCA 2002). The assessment of 18 additional defense points must be

removed since it is based on an illegal conviction, as shown above.

C. Defendant has one constitutional right at sentencing. To be sentenced based on accurate information. The Court's assessment of 80 victim injury points was based on its belief that Saxton and/or her family were claiming injury. (The Court asked the State at sentencing if it had gotten the Saxtons' approval of the sentence.) The State and/or Defendant's counsel concealed Saxton's 4/10/01 testimony from Defendant until 12/05. In it, Saxton tells the police she is pregnant and has been living with an adult paramour for years. She was 15. The police allowed her to continue to do so. The State obviously did not believe that Saxton was being injured by sex, believing the opposite to be true, the Court assessed 80 victim injury points, which is assessed for a life-threatening injury, such as putting a person in the hospital with a coma. This Court has a universal reputation for justice and fairness and would not have

assessed the points had it not been for material misinformation. 1) U.S. v. Gonzales, 766 F2 1383 (CA 9, 1985); 2) Ryder v. Morris, 752 F2 327 (CA 8, 1985).

"PP." As a result of the ineffectiveness of counsel not advising the Court of its duty to do so, the Court knowing of the Channel 13 News feature accusing Defendant of being involved in a child pornography sex ring, which aired during the trial, failed to voir dire the jury, depriving Defendant of a fair trial under the 14th Amendment.

"QQ." Counsel was ineffective when he failed to investigate police and/or prosecutorial misconduct in tampering with evidence depriving Defendant of a fair trial under the 14th Amendment.

CERTIFICATE OF SERVICE

I CERTIFY that I served a true copy of this Memorandum by U.S. Mail this 10th day of July, 2006 on Mark Ober, Esquire, at 800 East Kennedy Boulevard, Tampa, Florida 33602.

/s/ David R. Stahl

David Russell Stahl
Holmes Correctional Institution
3142 Thomas Drive
Bonifay, Florida 32425

UN-NOTARIZED OATH

Under penalties of perjury, I declare that I have read the foregoing Motion and that the facts are true. I make this declaration on this 10th day of July, 2006.

Respectfully Submitted,

D/S /s/ David R. Stahl

CERTIFICATE OF SERVICE

I CERTIFY that I served a true copy of this Memorandum by U.S. Mail this 10th day of July, 2006 on Mark Ober, Esquire, at 800 East Kennedy Boulevard, Tampa, Florida 33602.

/s/ David R. Stahl

David Russell Stahl
Holmes Correctional Institution
3142 Thomas Drive
Bonifay, Florida 32425

DISTRICT COURT OF APPEAL FOR THE
SECOND DISTRICT OF FLORIDA

DAVID RUSSELL STAHL,

Appellant,

vs. Appeal No. 2D06-5803

L..T. No. 01-1737, 01-5859

STATE OF FLORIDA,

Appellee.

_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE TENTH JUDICIAL CIRCUIT

INITIAL BRIEF OF THE APPELLANT DAVID RUSSELL STAHL

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Argument

Issue One

THE TRIAL COURT ERRED IN SUMMARILY DENYING THE APPELLANT'S MOTION FOR POST CONVICTION RELIEF PURSUANT TO RULE 3.850 BY UPHOLDING AND ENFORCING THE WAIVER OF ALL POST CONVICTION RELIEF MOTIONS AT THE SENTENCING HEARING

The summary denial of a motion for post conviction relief pursuant to Rule 3.850 without an evidentiary hearing is subject to review by this Court pursuant to Florida Rule of Appellate Procedure 9.14 1(b)(2). The standard of review on an appeal from this summary denial is that unless the record shows conclusively that the appellant is entitled to no relief, the order denying the motion for post-conviction relief shall be reversed and the cause remanded for an evidentiary hearing or other appropriate relief. Fla. R. App. P. 9.14 1(b)(2)(D); Moore v. State, 870 So.2d 74, 75 (Fla. 2d DCA 2003).

The trial court summarily denied Mr. Stahl's Motion for Post Conviction Relief solely on the ground that Mr. Stahl had effectively, knowingly, and voluntarily waived his right raise to any and all issues relating to his judgments and sentences by post-conviction relief motions including petitions for writ of habeas corpus and Rule 3.850 motions. In doing so, the Circuit Court relied exclusively on the cases of Leach v. State, 914 So.2d *519* (Fla. 4th DCA 2005), and Garvin v.

by entering a plea he or she gives up the right to appeal all matters relating to the judgment, but that the plea does not impair the right to review by appropriate collateral attack. Fla. R. Crim. P.3.172(c)(4). A waiver of post-conviction relief cannot be presumed from the plea, and in fact the trial court has the affirmative duty to advise the defendant what post-conviction rights are being waived and what post-conviction rights are not being waived.

There is a fundamental legal basis for not upholding and enforcing a waiver of all post-conviction relief made at the time of a plea, unlike a waiver of the right to appeal. The Florida cases allowing for the waiver of the right to appeal are premised entirely on the Florida Supreme Court's conclusion that the United States Constitution does not provide for direct appeal as a matter of due process. Amendments to the Florida Rules of Appellate Procedure, *685* So.2d at 775. Although the United States Constitution does not provide for the right of direct appeal, it does provide for the inviolate right to petition for a writ of habeas corpus. U.S. Const. art. I, § 9, cl. 2. The right to habeas corpus is also guaranteed by the Florida Constitution.

Fla. Const. art. I, § 13. Leach, Garvin, and other cases upholding and enforcing waivers of direct appeal are therefore inapplicable to purported waivers of the right to habeas corpus. Similarly, Rule 3.850 was intended to provide a procedural mechanism for raising those collateral post

Issue Two

THE RECORD DOES NOT SUPPORT THE FINDING OF THE TRIAL COURT THAT THE WAIVER OF ALL POST CONVICTION RELIEF MOTIONS BY THE APPELLANT WAS KNOWING AND VOLUNTARY

The trial court found that in entering his plea and in exchange for the negotiated disposition of his case, Mr. Stahl made a voluntary, knowing, and intelligent waiver of "his right to any post-verdict challenges to the convictions, including Rule 3.850 motions." Order 9/30/06, 3. The trial court cited the sentencing transcript, in which the prosecutor announced that Mr. Stahl in signing the written plea agreement

> has waived all post trial challenges, including direct appeal and any motions for — I believe there is a motion for new trial and maybe a motion for directed verdict, and also any post conviction motions including habeas corpus, 3.850 and waiving his right to make any

challenges in 01·1737.

A defendant in entering a plea may waive various rights, including his right to a trial by jury, so long as the waiver is knowing, intelligent, and voluntary. Blair v. State, 698 So.2d 1210, 1213 (Fla. 1997). The trial court has the legal duty to directly inform the defendant of pertinent constitutional rights and to make a determination on the record that any waiver of rights is made voluntarily and knowingly. Allen v. State, 463 So.2d 351, 362 (Fla. 1st DCA 1985). A knowing and voluntary waiver of constitutional rights will not be presumed from a silent record. Id., citing Carnley v. Cochran, 369 U.S. 506, *516*, 82 S.Ct. 884, 8 L.Ed.2d 70 (1962). A defendant cannot voluntarily waive defenses of which he is not informed. Rouzard v. State, 952 So.2d 1290, 1292 (Fla. 4th DCA 2007).